

## **REMARKS**

New claims 24-34 have been added by this Amendment, and are now pending in this application. Claims 1-11 and 16 were previously canceled, and claims 12-15 and 17-23 are hereby canceled. This Amendment is being made solely to expedite prosecution of the present application and does not constitute an acquiescence to any rejection by the Examiner. Rather, Applicant reserves the opportunity to pursue the subject matter of these and other claims in this application or a related counterpart. Support for the new claims can be found throughout the present application and in particular in the originally filed specification and drawings. Thus, no new matter is introduced by this Amendment.

Applicant respectfully requests favorable consideration of the new claims and the following remarks.

In the Office Action claim 23 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 902,040 to Wyckoff ("Wyckoff"). Claims 12-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,179,838 to Fiz ("Fiz") in view of PCT Published Application No. WO 02/09604 A1 to Burgess ("Burgess"). Each of these previous rejections is now moot by the cancellation of the prior claims.

Newly added independent claim 24 recites a vertebral fixation system including a spinal rod, a connecting part, a ligature, and a lock. The connecting part includes first and second longitudinal members that are moveable relative to one another between a first position and a second position where the spinal rod is captured. As recited in claim 24, the ligature has a first end that is directly attached to the connecting part. The second end of the ligature is received in an orifice of one of the longitudinal members of the connecting part, thereby defining a loop between the first and second ends of the ligature. When the longitudinal members are in the first position, the size of the loop is adjustable, whereas when the longitudinal members are in the second position, the size of the loop is fixed. The vertebral fixation system of claim 24 includes a lock to secure the first and second longitudinal members in the second position with the rod captured between them.

Newly added claims 25-27 depending from claim 24 further recite features such as: the first and second longitudinal members being joined by a hinge, which may include a pivot pin, and wherein the first end of the ligature is ligated around the pivot pin. Newly added claims 28-30 depending from claim 24 recite features such as: the connecting part defining a passage

configured to capture the spinal rod, wherein the orifice may be in communication with the passage, and where the passage may be defined by a groove in a face of at least one of the longitudinal members. Newly added claims 31-33 depending from claim 24 recite features such as: a second orifice where the second end of the ligature is received therein, the ligature being a flexible strip which may be made of polymer. Newly added claim 34 depending from claim 24 recites the features of the lock including first and second bores through the first and second longitudinal members, respectively, and a screw extending between the first and second bores.

Applicant respectfully submits that each of the newly added claims is allowable over the prior art of record alone or in combination, at least for failing to disclose each and every feature as claimed.

Applicant respectfully submits that Wyckoff discloses a wire connector “for connecting electrically or mechanically two or more wires used for conducting electricity.” (Wyckoff, pg. 1, lines 11-14). Applicant respectfully submits that Wyckoff does not show or suggest a vertebral fixing system as claimed in new independent claim 24.

Applicant respectfully submits that Wyckoff does not show or suggest a spinal rod as required by new independent claim 24.

Additionally, Applicant respectfully submits that Wyckoff discloses a wire connector for connecting two separate wires, such as those numbered 12 and 16 in FIGS. 2-6. Applicant respectfully submits that nowhere in Wyckoff is it shown or suggested to have a ligature having a first end directly attached a connecting part and a second end received in an orifice of the connecting part to define a loop between the first and second ends.

Applicant respectfully submits that, as noted by the Examiner, Fiz does not disclose a ligature having a first end attached to a connecting part and a second end received in an orifice of the connecting part to define a loop between the first and second ends.

Applicant submits that Burgess does not disclose a connecting part including a first longitudinal member and a second longitudinal member.

Additionally, Applicant submits that, as noted by the Examiner, Fiz in combination with Burgess does not disclose a ligature *directly* attached to the connecting part.

Applicant respectfully submits that none of the prior art cited, whether considered separately or in combination, disclose all of the features as recited in new independent claim 24. Furthermore, Applicant respectfully submits that even if the cited references did disclose all of the features of independent claim 24, and Applicant submits that they do not, no motivation to

combine the references has been shown or provided by the Examiner or by the references. Wyckoff discloses an electrical wire connector and one of skill in the art would not have looked to electrical connection art nor been motivated to adapt such a connector for use as a vertebral fixation system. Additionally, no motivation exists to combine the ligature of Burgess with the spinal fixation screw and rod system of Fiz at least because the system disclosed by Fiz includes vertebral screws to attach to the spine, and the addition of a ligature for attachment to the spine is entirely unnecessary.

Applicant respectfully submits that new independent claim 24 is allowable because none of the prior art cited, whether considered separately or in combination, discloses all of the features recited in claim 24. Further, claims 25-34 are also allowable at least for depending therefrom. Moreover, dependent claims 25-34 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner.

#### Formal Request for Interview

Applicant submits that the present application is in condition for allowance at least for the reasons set forth herein. If the present application is not considered to be in condition for allowance by the Examiner, Applicant requests an interview with the Examiner to discuss the present application and the prior art of record. The Examiner is invited to contact Applicant's Attorney to schedule a mutually convenient date and time or to request additional information as required.

#### CONCLUSION

On the basis of the foregoing Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record.

As noted above, this Amendment is being made solely to expedite prosecution of the present application and do not constitute an acquiescence to any reference identified by the Examiner. For the reasons set forth above, Applicant respectfully submits that all pending claims define patentable subject matter over the cited art, either considered alone or in combination. For these reasons, Applicant respectfully requests that the claims be allowed.

In view of the foregoing, Applicant believes that this application is now in condition for allowance; early notice of which would be appreciated. Should the Examiner not agree, then a

personal or telephonic interview is respectfully requested to discuss any remaining issues in an effort to expedite the allowance of this application.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to the Deposit Account for Customer Number 23492, Ref. No. 7672US01. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, or in the attached Petition, Applicant requests such extension and authorizes the charging of the extension fee to Deposit Account for Customer Number 23492, Ref. No. 7672US01.

Respectfully submitted,

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Date

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